State Notes

TOPICS OF LEGISLATIVE INTEREST

March/April 2006

Prescription Contraceptive Coverage
By Julie Koval, Legislative Analyst

An issue of considerable public interest over the last few years is that of insurance coverage for prescription contraceptives. Nothing in current Michigan law prohibits insurers from excluding contraceptive drugs and devices from the prescription benefit plans they offer to employers and individuals, a practice some people believe amounts to sex-based discrimination. Although some insurance providers cover prescription contraceptives under the terms and conditions they apply to other prescription drugs, some do so only under a separate rider upon request of the purchaser (usually an employer). Others do not cover prescription contraceptives at all.

To date, more than 20 states have passed legislation requiring insurers that provide a prescription drug benefit to include prescription contraceptives under the same conditions as those that cover other drugs. This article examines the factors relevant to the debate surrounding state-mandated contraceptive coverage, and legislation that has been introduced in Michigan.

Contraception: Basic Health Care or Choice?

Reportedly, approximately 3.0 million unintended pregnancies occur in the United States every year--half of all pregnancies nationwide. Proponents of so-called "contraceptive equity" legislation assert that a woman's ability to control her fertility belongs within the scope of basic health care needs, and should be covered as such by insurance companies. According to the Alan Guttmacher Institute, a typical woman in the United States desires to have two children. Without using any form of contraceptive, however, a woman might become pregnant 12 times during her life. Thus, most women spend the majority of their childbearing years trying to avoid pregnancy.

Equity legislation advocates also point out that impotency drugs, such as Viagra, typically are covered under prescription drug plans, often without a separate rider. While some argue that those drugs are prescribed to treat a medical condition, others contend that they do not serve any clear purpose beyond enhancing the capacity to engage in sexual activity. Some find it illogical that drugs men use to treat problems of the reproductive system are considered basic health care, while measures women employ to control their reproductive health frequently are not.

Moreover, as supporters of equity legislation point out, contraceptives are used for purposes other than birth control. Physicians frequently prescribe oral contraceptives for the treatment of conditions such as acne, dysmenorrhea (menstrual pain), menorrhagia (excessive menstrual bleeding), and endometriosis (a condition in which tissue that normally lines the uterus is found elsewhere). While some insurers do cover contraceptives prescribed for a medical condition, many do not. Regardless of the reason for the prescription, advocates argue, insurers' ability to exclude contraceptives constitutes an intrusion into a health care decision that should be made by the physician and the patient.

Some opponents believe that contraceptive equity laws simply force insurance companies and subscribers to pay for the irresponsible behavior of others, and that people should avoid unintended pregnancies by practicing abstinence. Advocates often counter that contraceptives are used by a broad range of women, including married women, and that the desire to plan pregnancies in accordance with emotional, physical, and financial preparedness *is* responsible.

Contraceptive equity advocates also note that insurance plans typically cover surgical sterilization for both men and women, and question the distinction between that option and reversible methods.

Out-of-Pocket Costs

Reportedly, women, on average, pay 68.0% more in out-of-pocket costs for health care than men pay, a disparity due in part to the lack of contraceptive prescription coverage. Those in favor of equity laws argue that it is unfair that women must pay more simply because they have additional health care needs by virtue of their gender.

Supporters also assert that many women would like to make responsible choices with regard to pregnancy, but that an absence of insurance coverage renders such decisions unaffordable. At an average of $40 per month, oral contraceptives cost approximately $480 per year. In comparison, a first-trimester abortion reportedly can be obtained for about $350.

Costs of Coverage vs. the Costs of Unintended Pregnancy

According to supporters, requiring equitable insurance coverage would raise costs in the short-term only minimally, and would result in reduced health care expenditures and other, less tangible costs over time.

At several hundred dollars per year, birth control pills clearly are less expensive than prenatal care, birth, and postnatal care, which cost thousands of dollars. According to equity law advocates, employers pay 15.0% to 17.0% more under benefit plans that exclude contraceptive coverage. Planned Parenthood Affiliates of Michigan estimates that including contraceptive options in prescription plans that do not currently include them would increase an employer's health care costs by $1.43 per month per employee, assuming the employer pays for 80.0% of the premium.

Some employers acknowledge that the additional cost per employee might seem negligible, but point out that the aggregate increase for all employees can be significant. Health care costs are rising steadily, causing many business owners to offer less comprehensive plans, increase copays and deductibles, or simply drop coverage. Some employers argue that requiring additional benefits would exacerbate their economic troubles and actually could result in insurance coverage for fewer people.

Those who favor equity laws contend that increasing the affordability of contraception also would mitigate the social costs of unintended pregnancy. As mentioned above, approximately 3.0 million unintended pregnancies occur in the United States every year,

roughly half of which end in abortion. Some people believe that equity laws would result in fewer unintended pregnancies and, therefore, fewer abortions.

Unplanned pregnancy frequently is associated with increased health risks to women and their babies, as well as impediments to child development. Reportedly, women who experience unplanned pregnancies are less likely to seek adequate prenatal care, which can result in an increased risk of maternal morbidity and infant mortality, as well as low birth weight. Additionally, women who unintentionally become pregnant reportedly are at a greater risk of physical abuse, as are their children. Equity law advocates say that these negative impacts can be mitigated if women are able to control the timing of their pregnancies, ensuring that more children are born to parents who want and are prepared to care for them. Furthermore, these parents may be able to achieve more educationally and professionally, resulting in greater economic stability.

Religious Freedom

Some oppose contraceptive equity laws for religious reasons and believe that such laws reinforce the idea that fertility is a disease requiring treatment. They claim that equity laws essentially force employers that oppose the use of birth control, such as Catholic employers, to choose between offering comprehensive coverage that violates their core beliefs, and dropping prescription coverage altogether in order to avoid breaking the law. Some states have included religious exemptions in their equity laws; reportedly, however, the additional language, in practice, has not provided the expected level of protection for employers that exercise this option.

The Role of Government

Some stakeholders oppose contraceptive equity legislation on the basis that it is a state mandate that will drive up insurance premiums further and contribute to a less friendly business environment. They argue that insurers' decisions regarding the plans they offer should be driven by market demand. Indeed, if employers and other purchasers want a benefits package that includes prescription contraceptive coverage, it is in insurance companies' best interest to provide that option, according to these opponents. Some feel that the state should have a regulatory role in health care to ensure a certain level of consumer safety, but that involvement in purchasers' ability to determine what type of coverage meets their needs is inappropriate.

Some also have pointed out that insurance companies currently are not required to provide prescription coverage at all, and argue that it would not make sense to specify in statute what that coverage must include *if* it is offered.

Legal History

In 2001, the U.S. District Court for the Western District of Washington at Seattle addressed whether the exclusion of contraceptives from an employer's comprehensive prescription plan constituted sex-based discrimination, in *Erickson* v *Bartell Drug Co.* (No. C00-1213L). In this case, Bartell, a self-insured business, covered all prescriptions, except for contraceptive

devices, weight reduction drugs, infertility drugs, smoking cessation drugs, dermatologicals for cosmetic purposes, growth hormones, and experimental drugs. The plaintiffs claimed that the exclusion of prescription contraceptives violated Title VII of the Federal Civil Rights Act, as amended by the Pregnancy Discrimination Act (PDA).

Title VII applies to employers with at least 15 employees, and prohibits such an employer from failing or refusing to hire, discharging, or otherwise discriminating against any individual "with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin".

Congress amended the Civil Rights Act in 1978 by enacting the PDA, which clarifies that discrimination due to "pregnancy, childbirth, or related medical conditions" constitutes prohibited sex-based discrimination. Based upon the legislative history, the plain language of the statute, and relevant case law, the Court determined that "Bartell's exclusion of prescription contraception from its prescription plan is inconsistent with the requirements of federal law…Male and female employees have different, sex-based disability and healthcare needs, and the law is no longer blind to the fact that only women can get pregnant, bear children, or use prescription contraception. The special or increased healthcare needs associated with a woman's unique sex-based characteristics must be met to the same extent, and on the same terms, as other healthcare needs."

Although Bartell raised several arguments in its defense, it focused primarily on the contention that contraceptives are voluntary and preventative, do not treat or prevent an illness or disease, and are not truly a "healthcare" issue, so it was reasonable to treat them differently from other prescription drugs.

With regard to this assertion, the Court stated, "…the availability of affordable and effective contraceptives is of great importance to the health of women and children because it can help to prevent a litany of physical, emotional, economic, and social consequences." The court noted that a woman experiencing an unintended pregnancy is less likely to seek prenatal care and more likely to engage in unhealthy activities, have an abortion, or deliver an underweight, ill, or unwanted baby. Additionally, the Court cited an earlier U.S. Supreme Court assertion that women's ability to control their reproductive lives fosters their ability to "participate equally in the economic and social life of the nation."

In conclusion, the Court determined that "Bartell's prescription drug plan discriminates against Bartell's female employees by providing less complete coverage than that offered to male employees...leaving a fundamental and immediate healthcare need uncovered…Title VII requires employers to recognize differences between the sexes and provide equally comprehensive coverage, even if that means providing additional benefits to cover women-only expenses."

The Court granted the plaintiffs' motion for summary judgment, and ordered Bartell to cover prescription contraception methods to the same extent and on the same terms that it covered other drugs, devices, and preventative care. Additionally, the Court ordered Bartell to cover contraception-related services, such as the initial physician's visit and any follow-up visits and outpatient services, on the same terms.

State Activity

Several bills pertaining to prescription contraceptive coverage have been introduced in the Michigan Legislature during the 2005-2006 session. Senate Bills 431 and 432 and House Bill 5175 would require a policy or certificate that provides prescription coverage to include coverage for any prescribed drug or device approved by the U.S. Food and Drug Administration for use as a contraceptive.

The coverage required under the bills could not be subject to any dollar limit, copayment, deductible, or coinsurance provision that did not apply to prescription coverage generally.

Senate Bill 431, sponsored by Senator Martha Scott, and House Bill 5175, sponsored by Representative Steve Bieda, would apply to an expense-incurred hospital, medical, or surgical policy or certificate delivered, issued for delivery, or renewed in this State, and to a health maintenance organization group or individual contract. Senate Bill 432, sponsored by Senator Bev Hammerstrom, would apply to a Blue Cross and Blue Shield of Michigan certificate.

Senate Bills 431 and 432 have been referred to the Senate Health Policy Committee, while House Bill 5175 has been referred to the House Insurance Committee.

In addition, the Civil Rights Commission announced on April 17, 2006, that it is accepting arguments on the issue of contraceptive equity in comprehensive employer health care plans. "At issue is whether an employer's exclusion of prescription contraceptives, from a health care plan that covers other prescription drugs, violates the sex discrimination provisions of the Elliott-Larsen Civil Rights Act." The Commission voted at a March meeting to issue a declaratory ruling following a request from the American Civil Liberties Union of Michigan. The Commission will issue a formal ruling at a future date to be determined.

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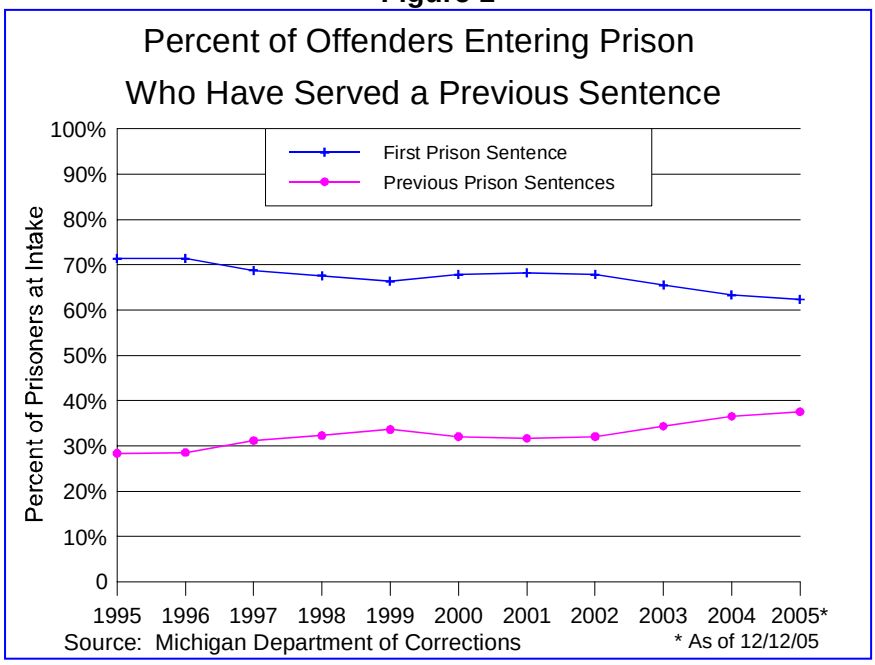
The Michigan Prisoner Re-Entry Initiative
By Lindsay Hollander, Fiscal Analyst

The Department of Corrections (DOC) accounts for 4.6% of Michigan's total State government budget, 19.8% of the General Fund/General Purpose budget, and has the fifth largest departmental budget in the State for fiscal year (FY) 2005-06. The appropriation has increased every year since FY 2001-02. As prison populations rise, the State also may have to invest additional funds in order to build new prisons. The prison population for 2005 (49,377) included over 10,000 more inmates than the 1995 population, and was three times higher than the population in 1985 (16,003). Much of the growth in the prison population can be accounted for by offenders who have served prison sentences in the past, meaning they already have been through the DOC system. Figure 1 shows that the proportion of prisoners entering Michigan prisons who have served a previous prison sentence rose nearly 10.0% since 1995. The majority of these offenders have served one or two previous sentences. These data include both offenders who received their sentence during their parole term and those who were sentenced after their parole term.

Figure 1



Michigan Prisoner Re-Entry Initiative

In an attempt to curb prison population growth, the DOC developed the "Michigan Prisoner Re-entry Initiative" (MPRI). The MPRI proposes to transform the DOC in two ways. The first involves the way the MPRI redefines an offender's parole experience by building a plan for re-entry into the community at the beginning of Phase I, the offender's entry into prison. This plan is called the Transition Accountability Plan (TAP) and is created with the input of prison staff, the offender, his or her family, parole officers, victims, human service providers from other State

departments[1], and local community organizations. This collaboration of these stakeholders is the second way that the DOC is reforming its operations. This model's goal is for offenders to have the appropriate resources to prepare for parole and re-enter the community.

The TAP incorporates a variety of plans, including obtaining a driver's license, receiving mental health treatment, and finding employment. The TAP is rewritten three times as the offender makes the transition from entering prison, to ending the process with discharge from parole. The first rewrite occurs during Phase II. Phase II begins nine months to one year before the offender's parole and ends when the offender is paroled. A second rewrite occurs during Phase III at parole when the TAP will include a parole supervision plan. Finally, a discharge plan is created at the end of Phase III. The Transition Team, which includes DOC staff and community human service providers, uses a case management model to monitor the offender's status and the implementation of the TAP. As the offender gets closer to discharge, community service providers will take over the case entirely, depending on the offender's needs.

Funding

Funds for the MPRI were first appropriated in the FY 2005-06 budget legislation containing the DOC budget, Public Act 154 of 2005. The $12,878,700 line item is funded by General Fund/General Purpose and a $1,035,000 grant for prisoner reintegration from the U.S. Department of Justice (DOJ). The appropriation will provide $5.0 million for the first eight pilot sites[2], which will target 1,800 offenders and serve 1,000 during the fiscal year. The Mentally Ill Inmate Demonstration Project received $3.0 million for a statewide test of Phase II and III of the MPRI model on 300 mentally ill offenders. An additional $3.0 million will be for MPRI service contracts in Wayne County, and other necessary services. The line item also provides $1.0 million for planning and administrative costs within the DOC.

A proposed supplemental appropriation for FY 2005-06 would provide an additional $4.0 million for the second round of MPRI pilot sites.[3] This funding would carry over as a work project to the next fiscal year. The Governor's budget proposal does not increase the appropriation for the MPRI for the second round of pilot sites, on the assumption that the supplemental will be approved.

History

Before the program's establishment in the FY 2005-06 budget, the DOC and other government entities already had begun the preliminary planning stages for the MPRI. In 2003, the DOC secured technical assistance grants from the National Institute of Corrections (NIC) and the National Governors Association (NGA) to address planning a re-entry program in Michigan. In

[1] The State Policy Team consists of representatives from the DOC, the Department of Labor and Economic Growth (DLEG), the Department of Community Health (DCH), the Department of Human Services (DHS), and the Department of Education (DOE).
[2] First round pilot sites include: Wayne, Kent, Genesee, Macomb, Kalamazoo, Ingham, and Berrien Counties and a nine-county rural region in northwestern Lower Peninsula.
[3] Second round pilot sites include: Oakland, Muskegon, Jackson, Saginaw, Washtenaw, St. Clair, and Calhoun Counties.

October 2003, the Michigan Prisoner Re-entry Advisory Council held its first meeting in order to begin planning the implementation of a model developed by the NIC called the "Transition from Prison to Community Model". The Advisory Council also used information from the Serious and Violent Offender Initiative (SVORI), which had been operating in Wayne County under the name Walk With Me since 2002 with a grant from the DOJ. Implementation began with the creation of a State Policy Team.

Beginning as early as 2002, communities and prisons around Michigan launched their own re-entry programs. These programs all used different re-entry models and funding sources. The first program, Walk With Me, encompassed the same elements as the MPRI, but its model differed from its successor. Since the program's inception, 25 out of 99 offenders (25.25%) who were paroled while in the program have failed parole and returned to prison. Additionally, 51 offenders have graduated to Phase III of the program, and 44 of these successful parolees are either employed or in educational or training programs. The 99 offenders in the program were in addition to 222 offenders who originally participated in Phase I of Walk With Me, but were unable to continue to parole in Phase II because they either were denied parole or were paroled outside of Wayne County. Advisory Council members and communities developed six other sites that demonstrated some of the elements that would be used later for the full MPRI pilots. Some of these sites were funded with Office of Community Corrections grants or other DOC funds, while others were funded locally or through Federal grants. In 2005, these re-entry programs began modifying their activities in order to incorporate the MPRI model. The programs, along with one other, serve as the eight pilot sites for the MPRI funded in the FY 2005-06 budget.

In March 2005, the Intensive Parole Release Unit began operating at the Cooper Street Correctional Facility (men, 480 beds) and the Huron Valley Complex (women, 52 beds). This program incorporates MPRI's model at Phase II, which involves special programming and planning in preparation for an offender's parole while he or she is still in prison. To date, 961 prisoners have completed the program and have been released from prison. Of these offenders, 4.5% have returned to prison.

With the implementation of the first two rounds of pilot sites, the DOC will ensure that the MPRI is in all urban counties and will include 80.0% of parolees by the end of 2006. The remaining rural counties will get MPRI sites during FY 2006-07, to be funded in FY 2007-08.

Current Status

As of February 2006, 160 offenders (20 at each pilot site) have entered the MPRI, and of these, 121 offenders have been paroled. These parolees have a 100% success rate so far. Before the MPRI began, 53.4% of those paroled in 2003 successfully remained in the community after two years. The remaining cases of this first cohort will be paroled by April 2006. According to the DOC, offenders are chosen for the MPRI based on whether they completed their requirements, such as earning a GED, and if they came from a county that currently has a pilot site. As the program is implemented statewide, all offenders will participate in Phase I of the MPRI when they enter prison.

The DOC does not expect the MPRI to have an impact on intake rates until after 2006. After 2006, the DOC expects intake rates and population rates to remain stable due to an expected increase in parole approval rates, and a decrease in parolee returns to prison. Assuming the MPRI will achieve these expected results, the run-out-of-beds date will be put off until March 2008. Over time, the DOC also expects to see a 2.0% annual improvement in the parole success rate. This improvement, however, will be compared with the baseline success rate of 51.3% from 1998. The DOC has not put forth plans to compare parole success rates of MPRI participants with a control group who did not participate in the MPRI. As the full MPRI Model is implemented, it may not be possible to distinguish the MPRI's real impact on offenders and the prison population from other factors that influence parole success rates.

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The Single Business Tax – Looking Back 30 Years
By Jay Wortley, Senior Economist

In fiscal year (FY) 1975-76, Michigan began collecting a brand new tax called the single business tax (SBT). During its first year, it generated $355.0 million. Today, some 30 years later, the tax is generating over $1.9 billion. The single business tax was a unique tax when it was first enacted, and it definitely remains a one-of-a-kind tax. Over the years, many deductions, credits, and exemptions have been eliminated, replaced, or added to the SBT, and the tax rate has been cut almost 20.0%. The impact of all of these changes definitely has taken a toll on the SBT, by distorting and moving the tax away from the value-added concept and by making it very complicated. Complaints against the SBT have grown steadily. In fact, the tax has been characterized as a "jobs killer" and the tax businesses love to hate. Under current law, the SBT is scheduled to be repealed effective January 1, 2010. In addition, an effort is currently under way to accelerate the elimination of this tax. While FY 2005-06 marks the 30th year of SBT collections, it is not clear whether to throw this business tax a birthday party or a retirement party.

This article looks back 30 years ago and describes the situation and circumstances that led Michigan to adopt the SBT in the first place. It is interesting to note that some of the issues that led to the enactment of the SBT are the same issues that seem to be working against it today.

Michigan and Value-Added Taxes

The single business tax is a tax on the value a business adds to its product or service. A typical business purchases inputs to make its product or provide its service. The difference between the cost of these inputs and the amount that the business receives from selling the product or service is the amount of value the business has added to the product or service and this is essentially the base of a value-added tax.

The single business tax was not Michigan's first value-added tax. From 1953 to 1967, Michigan had a business activities tax (BAT) which was a form of a value-added tax. This tax was repealed in 1967 when Michigan adopted a personal income tax. Apparently, in order to get enough votes to pass the personal income tax, some legislators insisted that a similar tax be placed on business. As a result, a corporate income tax also was adopted in 1967. The corporate income tax was in place until 1975, when the SBT was enacted.

Taxes the Single Business Tax Replaced

When the SBT was adopted it replaced several taxes, not just the corporate income tax. In fact, the revenue from the corporate income tax accounted for less than half of the revenue the SBT replaced. In addition to the corporate income tax, the SBT replaced six other State taxes and a local tax. The name "single" business tax comes from the fact that this new tax was replacing various other taxes. Of these eight taxes that were repealed, the most significant ones in terms of the amount of revenue generated were the State corporate income and franchise taxes, and the local property tax on inventories. All eight repealed

taxes are listed in the following table along with their revenue yields for FY 1970-71 to FY 1973-74.

Table 1

Michigan Taxes Replaced by the Single Business Tax
(Millions of Dollars)

Tax	FY 1970-71	FY 1971-72	FY 1972-73	FY 1973-74
	Total Revenue			
Corporate Income Tax	$152.6	$269.2	$368.0	$295.1
Corporate Franchise Fee	132.9	140.2	153.4	157.7
Inventory Property Tax	223.3	231.2	238.9	253.0
Financial Institutions Tax	12.2	14.0	13.4	17.1
Intangibles Tax (business portion)	27.3	26.8	30.2	28.8
Income Tax on Unincorporated Business	2.0	3.3	3.6	4.0
Saving and Loan Privilege Tax	0.3	0.4	0.5	0.6
Insurance Privilege Tax	1.0	1.1	0.9	1.2
Total Revenue	**$551.6**	**$686.2**	**$808.9**	**$757.5**

Source: Senate Fiscal Agency; State of Michigan Financial Report, various years; "The Michigan Single Business Tax", Advisory Commission on Intergovernmental Relations.

Circumstances under which the SBT Was Adopted

Moving back to a value-added tax and repealing eight existing taxes represented a major restructuring of Michigan's business taxes. When the plan was first proposed by Governor Milliken, it was not very popular. It was finally adopted, however, due largely to a combination of three factors: 1) The corporate income tax had some shortcomings that were hurting the State budget and the business climate, 2) Michigan's business taxes were being blamed, at least in part by some and in large part by others, for the poor business climate and economic performance, and 3) State government was facing a very large budget deficit.

Corporate Income Tax. In the 1960s and 1970s, Michigan's economy was even more dominated by the durable goods manufacturing sector than it is today. The volatile nature of the durable manufacturing sector caused large fluctuations in industries' financial success or lack thereof. As a result, this created significant swings in the level of corporate income tax receipts. For example, in FY 1970-71, corporate income tax receipts totaled $153.0 million and then in FY 1971-72 they jumped $116.0 million or 76.4% to $269.0 million. At today's price level, that would be equivalent to an increase of $540.0 million. These large swings in the corporate income tax helped create budget problems. Unexpected revenue growth one year led to increased spending only to be followed the next year by unexpected revenue shortfalls that required spending cuts and/or tax increases. In addition, businesses in the durable manufacturing sector were more than eager to eliminate the corporate income tax.

Michigan's Poor Economic and Business Climate. Michigan's unemployment rate averaged about 7.0% from 1970 to 1974 and then shot up to 12.5% in 1975. As a result, Michigan's unemployment rate averaged 7.8% from 1970 to 1975, which was 32.0% above the U.S.

average. This volatile nature of Michigan's economy helped contribute to the image that Michigan was not a good place to do business. In addition, the combination of Michigan's corporate income tax, franchise tax, and property tax on business inventories also was claimed to be a factor hurting Michigan's business climate. Proponents of the SBT argued that the SBT, through its capital acquisition deduction, would greatly reduce the tax burden on capital, compared with the corporate income tax, and would therefore promote capital investment and business expansion, and help create new jobs.

Looming Budget Deficit. The State faced a large budget deficit in FY 1975-76 of about $180.0 million (equivalent to about $840.0 million in today's dollars). Due to the timing of payments under the SBT, which is largely paid on a quarterly basis, and the corporate franchise tax, which was paid on an annual basis, switching to the SBT generated a cash flow gain of about $180.0 million in FY 1975-76 and thus eliminated the need to make significant spending cuts.

Summary

Thirty years ago many people viewed Michigan's business taxes as an impediment to the growth of some of the State's key sectors and believed that a change was needed to help revitalize the economy. The sweeping changes that transpired were not easy to make and probably would not have been made if the overall plan had not also solved the existing budget crises. Eliminating the SBT and finding a suitable replacement that will help revitalize the Michigan economy and not simply revisit prior problems also will be a very difficult task.

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Overview of the Initiative Process
By Bill Bowerman, Chief Analyst

Article II, Section 9 of the Michigan Constitution reserves to the people the power to propose laws and to enact and reject laws (the "Initiative"). The initiative process originated through a 1913 amendment to the Michigan Constitution of 1908. As described below, voter-initiated proposals must be either enacted by the Legislature or submitted to the electors. Initiated laws are not subject to the veto power of the Governor.

The Process

The process requires petitions signed by registered electors equal to not less than 8.0% of the total vote cast for all candidates for Governor at the last preceding general election at which a Governor was elected. In the 2002 general election, 3,177,565 votes were cast for all candidates for Governor. Therefore, 254,206 valid signatures (8.0%) are required to place an initiative petition on the November 7, 2006, general election ballot. Pursuant to State law, initiative petitions must be filed with the Secretary of State at least 160 days before the election at which the proposed law is to be voted upon. That filing deadline is May 31, 2006, for the November 7, 2006, general election. Once a petition is filed, no supplemental filings can be accepted. Petitions filed with the Secretary of State cannot be withdrawn. Signatures collected before a November general election at which a Governor is elected cannot be filed after the date of that election, for the following November general election.

Once petitions are submitted to the Secretary of State, the Secretary of State immediately notifies the Board of State Canvassers. It is the responsibility of the Board of State Canvassers to determine if the petitions have been signed by the required number of qualified and registered electors. Since the late 1970s, the Bureau of Elections (in the Department of State) has used a process developed by the Michigan State University Statistics and Probability Department to determine whether a petition has the requisite number of valid signatures. The first review includes checking individual sheets to determine whether there are errors that would invalidate all of the signatures on that sheet. Signatures on a petition that were made more than 180 days before the petition was filed with the Secretary of State are presumed void. The sheets that pass the initial review are numbered and the signatures are counted. The signatures are randomly sampled to determine an error rate. That rate is then projected over the entire universe of signatures.

As soon as the statistical sample is available for review or purchase, the Board of State Canvassers sets reasonable deadlines (usually 10 business days) for objections to be filed. Individuals or organizations may inspect the statistical sample or purchase copies in order to challenge signatures in the sample. At least two business days before the Board of State Canvassers meets to make a final determination on challenges to a petition, the Bureau of Elections is required to make public its staff report concerning the disposition of challenges filed against the petition.

Any law proposed by initiative petition (that is certified by the Board of State Canvassers) must be either enacted or rejected by the Legislature without change or amendment within 40 session days from the time the petition is received in the office of the Secretary of the

Senate and the Clerk of the House. Session days are interpreted as beginning the day that the Legislature convenes in regular session through the day the Legislature adjourns (sine die), including Sundays. Proposed laws that are not enacted within 40 days are submitted to the people for approval or rejection at the next general election.

If the Legislature rejects an initiative petition, the Legislature may propose a different measure on the same subject. Both measures then are submitted to the electors for approval or rejection at the next general election. If two or more measures approved by the electors at the same election conflict, the measure receiving the highest affirmative vote prevails.

Proposals Approved by the Voters vs. the Legislature

There are significant differences between voter-initiated proposals adopted by the people and voter-initiated proposals enacted by the Legislature.

Ballot proposals adopted by the people at the polls cannot be amended or repealed except by a vote of the electors unless otherwise provided in the initiative measure, or by a three-fourths vote of the members elected to and serving in each house of the Legislature. Pursuant to Article II, Section 9 of the Michigan Constitution, these laws take effect 10 days after the date of the official declaration of the vote.

Initiated laws enacted by the Legislature do not go before the voters. Voter-initiated proposals enacted by the Legislature are subject to referendum. (Referendum is the power of the voters to approve or reject laws enacted by the Legislature.) Unless the Legislature provides for immediate effect (which requires a two-thirds vote of each house), the law does not take effect until 90 days after the Legislature adjourns sine die. Voter-initiated laws enacted by the Legislature can be amended by a majority vote of the members of each house. There is some question as to whether the Legislature must wait until a subsequent session to amend a voter-initiated law that is enacted by the Legislature. Attorney General Opinion No. 4303, March 6, 1964, states: "It must follow that the initiative petition enacted into law by the legislature in response to initiative petitions are subject to amendment by the legislature at a subsequent legislative session. It is equally clear that the legislature enacting an initiative petition proposal cannot amend the law so enacted at the same legislative session without violation of the spirit and letter of Article II, Sec. 9 of the Michigan Constitution of 1963." Attorney General Opinion No. 4932, January 15, 1976, spoke to the issue of the Legislature's authority to amend voter-initiated laws that the Legislature enacts, without a reference to whether the authority of the Legislature to amend is limited to subsequent sessions.

Past and Present Voter-Initiated Proposals

Over the last 43 years, out of 14 voter-initiated proposals, nine have become law. Three of the proposals were enacted by the Legislature and six were adopted by a vote of the people. Table 1 lists the successful voter-initiated proposals:

Table 1

Voter-Initiated Laws		
Subject	**Year**	**Method of Adoption**
Repeal of law prohibiting daylight saving time	1972	Vote of the People
Bottle Deposit Law	1976	Vote of the People
Prohibition of parole until completion of minimum sentence for certain crimes	1978	Vote of the People
Restrictions on utility rate adjustments	1982	Vote of the People
Expression of desire for mutual nuclear weapons freeze with Soviet Union	1982	Vote of the People
Prohibition of public funding of abortions	1987	Enacted by Legislature
Parental consent regarding abortions	1990	Enacted by Legislature
Casino gaming in qualified cities	1996	Vote of the People
Legal Birth Definition Act[1]	2004	Enacted by Legislature

The following is the current status of pending initiative proposals for the 2006 General Election:

Educational Funding Guarantee (K-16) – 10-day period for challenges expires May 5, 2006.
Casey 50/50 Jury – Petition approved as to form in preparation for circulation.
Repeal of Single Business Tax – Petition approved as to form, collection of signatures in process.

The Department of State maintains a complete listing of the current status of ballot proposals on its website at the following location:

http://www.michigan.gov/documents/Statewide_Bal_Prop_Status_145801_7.pdf

This listing contains proposed constitutional amendments and referendum issues that are not included in this overview of the initiative process.

Sources

Michigan Constitution
Michigan Election Law
Department of State, Bureau of Elections
Carl, Christopher, How An Issue Becomes a Ballot Proposal, Legislative Service Bureau, Revised March 2006.
Attorney General Opinion No. 4303, 1964 and Attorney General Opinion No. 4932, 1976

[1] The Legal Birth Definition Act was declared unconstitutional by U.S. District Court, Eastern District of Michigan on September 14, 2005. The ruling is currently being appealed by the Attorney General in the U.S. Sixth Circuit Court (*Northland* v *Cox*).